



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,725	07/18/2003	Frank Butaric	CRD-0836 DIV 1	2936
27777	7590	11/28/2007	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			MILLER, CHERYL L	
		ART UNIT	PAPER NUMBER	
		3738		
		MAIL DATE	DELIVERY MODE	
		11/28/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.	Applicant(s)	
10/622,725	BUTARIC ET AL.	
Examiner	Art Unit	
Cheryl Miller	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 November 2007.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. _____.
3) Information Disclosure Statement(s) (PTO/SB/08) 5) Notice of Informal Patent Application
Paper No(s)/Mail Date _____.
6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 22, 2007 has been entered.

Response to Arguments

Applicant's arguments filed October 22, 2007 have been fully considered but they are not persuasive. Since the Lunn (US 5,476,506) rejection has been maintained, the examiner has responded to the applicant's arguments regarding this reference. The applicant has argued that Lunn's stent does not extend the entire length of the graft. This limitation however has *not been claimed*, instead it is claimed that the graft extend the length of the stent. Lunn clearly shows in fig.4 for example, a stent (36 or 52 singularly), of which a graft (10) covers substantially all of one of the stent bodies 36, 52. The applicant has also argued that Lunn does not disclose a single stent. A single stent however, has not been claimed, the claim is not excluded from having additional stents.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lunn (US 5,476,506, cited previously). Lunn discloses a stent graft (fig.1, 4, 5) comprising a hollow cylindrical radially expandable stent (36 or 52 singularly) having a body, two open ends and a longitudinal axis, the body comprising a plurality of interconnected struts (stent structure shown in figs.5a-5d) forming a plurality of diamond shaped cells and a plurality of sinusoidal rings positioned between the cells (stent 50 in fig.5D clearly shows the stent details, having the claimed structures see attachment 1) the stent being one piece unitary stent (stent 36 alone for example; or stent 52 alone for example, is a one piece unitary stent), and a graft member (10) attached to the stent, the stent extending through and being covered by the graft member (graft seen clearly in fig.4 to cover all of the stent 36 or 52 in fig.5D), the graft (10) having a plurality of longitudinally directed pleats (22+24). Lunn discloses the graft (10) attached to the exterior of the stent (36, 38, 50, 52) such that the stent extends through the graft. Lunn discloses a graft (10) made of the materials claimed (col.5, lines 59-67). Lunn discloses the graft (10) attached to the stent (36, 38, 50, or 52) by a staple (col.5, lines 10-14).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn (US 5,476,506, cited previously). Lunn discloses a stent graft substantially as claimed. Lunn however, discloses a balloon expandable stent instead of a self-expanding stent. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a nitinol or such type of self expanding stent, since self expanding stent materials are known alternatives to balloon expandable stent materials, and also since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

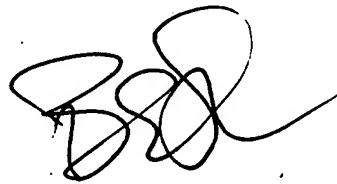
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cheryl Miller/



BRUCE SNOW
PRIMARY EXAMINER